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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Rachael Gilburd, an Arizona Resident;
Andrew Gebhart, an Arizona Resident;
Daniel Featherstone, an Arizona
Resident; **Derek Martin**, an Arizona
Resident; **Angela McGuire**, an Arizona
Resident; **Kori Morin**, an Arizona
Resident, **Katherine Redas**, an Arizona
Resident, **Erin Salava**, an Arizona
Resident; **David Vallejo**, a Michigan
Resident; and **Nick Vincent**, an Arizona
Resident, Individually and on Behalf of
All Others Similarly Situated

Plaintiffs,

v.

Rocket Mortgage, LLC, a Michigan
limited liability company;

Defendant.

Case No.:

**COLLECTIVE ACTION COMPLAINT
FOR COMPENSATION UNDER 29
U.S.C. § 201, *ET SEQ.***

(Demand for Jury Trial)

Plaintiffs Rachael Gilburd, Andrew Gebhart, Daniel Featherstone, Derek Martin, Angela McGuire, Kori Morin, Katherine Redas, Erin Salava, David Vallejo, and Nick Vincent (“**Plaintiffs**”), individually, and on behalf of all other persons similarly situated for his Collective Action Complaint against Defendant Rocket Mortgage, LLC (“**Rocket**” or “**Defendant**”) hereby alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiffs and the Collective Members¹ are current and former mortgage bankers employed by Defendant.

2. Plaintiffs bring this action on behalf of themselves and all other similarly situated Collective Members who were not fully compensated their overtime wages.

3. Plaintiffs and the Collective Members were compensated on an hourly basis and were not paid one-and-one-half times their regular rates of pay for all time worked in excess of 40 hours in a given workweek.

4. Plaintiffs and the Collective Members bring this action against Defendant for their unlawful failure to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 201-219 (hereinafter “FLSA”).

5. This is an action for equitable relief, overtime wages, unpaid wages, liquidated damages, interest, attorneys’ fees, and costs under the FLSA.

6. The FLSA was enacted “to protect all covered workers from substandard wages and oppressive working hours.” Under the FLSA, employers must pay all non-exempt employees one-and-one-half times their regular rates of pay for all time spent working in excess of 40 hours per workweek. *See* 29 U.S.C. § 207(a).

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201, *et seq.*

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c)

¹ Collective Members are fully defined below, under the Collective Action Allegations header.

1 because acts giving rise to the claims of Plaintiffs and the Collective Members occurred
2 within the District of Arizona, and Defendant regularly conducts business in and has
3 engaged in the wrongful conduct alleged herein – and, thus, are subject to personal
4 jurisdiction in – this judicial district.

5
6 9. This Court has jurisdiction over the subject matter and the parties hereto
7 pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

8
9 **PARTIES**

10 10. At all relevant times to the matters alleged herein, Plaintiffs resided in the
11 District of Arizona.

12 11. At all relevant times to the matters alleged herein, Plaintiffs were full-time
13 employees of Defendant.

14 12. At all relevant times to the matters alleged herein, Plaintiffs were employees
15 of Defendant as defined by 29 U.S.C. § 203(e)(1).

16 13. At all relevant times to the matters alleged herein, Plaintiffs and the
17 Collective Members were non-exempt employees.

18 14. Defendant Rocket Mortgage LLC is a company authorized to do business in
19 Arizona.

20 15. Defendant was Plaintiffs' and the Collective Members' employer as defined
21 by 29 U.S.C. § 203(d).

22 16. Upon reasonable belief, Plaintiffs and the Collective Members, in their work
23 for Defendant, were employed by an enterprise engaged in commerce that had annual gross
24 sales of at least \$500,000 in 2020.

25 17. Upon reasonable belief, Plaintiffs and the Collective Members, in their work
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1 for Defendant, were employed by an enterprise engaged in commerce that had annual gross
2 sales of at least \$500,000 in 2021.

3
4 18. Upon reasonable belief, Plaintiffs and the Collective Members, in their work
5 for Defendant, were employed by an enterprise engaged in commerce that had annual gross
6 sales of at least \$500,000 in 2022.

7
8 19. At all relevant times, Plaintiffs and the Collective Members, in their work for
9 Defendant, were engaged in commerce or the production of goods for commerce.

10
11 20. At all relevant times, Plaintiffs and the Collective Members, in their work for
12 Defendant, were engaged in interstate commerce.

13
14 21. Plaintiffs and the Collective Members, in their work for Defendant, regularly
15 handled goods produced and transported in interstate commerce.

16
17 22. Plaintiffs and the Collective Members would communicate regarding
18 business matters via telephone.

19
20 23. Plaintiffs and the Collective Members are covered employees under
21 individual coverage.

22
23 24. Plaintiffs and the Collective Members are covered employees under
24 enterprise coverage.

25
26 **FACTUAL ALLEGATIONS RELATING TO PLAINTIFFS**

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28 25. Defendant Rocket Mortgage, LLC is a mortgage company.

29
30 26. Plaintiff Rachael Gilburd was employed by Defendant from on or around
31 August 7, 2020 until August 27, 2022.

32
33 27. Plaintiff Andrew Gebhart was employed by Defendant from on or around
34 January 14, 2013 until February 8, 2022.

1 28. Plaintiff Daniel Featherstone was employed by Defendant from on or around
2 October 14, 2013 until August 29, 2022.

3 29. Plaintiff Derek Martin was employed by Defendant from on or around
4 February 5, 2018 until August 12, 2022.

5 30. Plaintiff Angela McGuire was employed by Defendant from on or around
6 January 4, 2021 until August 1, 2022.

7 31. Plaintiff Kori Morin was employed by Defendant from on or around March
8 9, 2015 until August 17, 2022.

9 32. Plaintiff Katherine Redas was employed by Defendant from on or around
10 June 5, 2017 until October 1, 2022.

11 33. Plaintiff Erin Salava was employed by Defendant from on or around July 2,
12 2021 until July 19, 2022.

13 34. Plaintiff David Vallejo was employed by Defendant from on or around
14 November 16, 2015 until May 6, 2022.

15 35. Plaintiff Nick Vincent was employed by Defendant from on or around July
16 1, 2019 until August 18, 2022.

17 36. During their employment, Plaintiffs' were mortgage bankers whose primary
18 job duties included the origination of residential mortgages.

19 37. At all relevant times, Plaintiffs were to be paid an hourly rate at or near
20 minimum wage.

21 38. At all relevant times, Plaintiffs also received incentive pay and bonuses.

22 39. Plaintiffs routinely worked in excess of 40 hours per week.

23 40. During each pay period, Plaintiffs were paid for 40 hours of their regular
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1 hourly rate.

2 41. During each pay period, Plaintiffs were also paid an amount for “Salary
3 Adjust”, “Salary Adjust OT”, and “Overtime.”
4

5 42. At the end of the month, Plaintiffs were paid any incentive pay or bonuses.

6 43. In addition, at the end of the month, Plaintiffs were paid an additional sum
7 for “Retro OT.”
8

9 44. While Plaintiffs were paid some overtime pay, Plaintiffs were not paid the
10 correct amount of their overtime wages.

11 45. At all times relevant, Defendant improperly calculated Plaintiffs regular rate
12 of pay pursuant to the FLSA.

13 46. Defendant failed to properly incorporate the incentives, bonuses, and
14 additional compensation paid to Plaintiffs in each pay period as part of the determination
15 of their regular rate of pay.
16

17 47. As a result, Defendant failed to pay Plaintiffs overtime at a rate of 1.5 times
18 Plaintiffs’ regular rate of pay pursuant to the FLSA.
19

20 48. At all relevant times during Plaintiffs employment, Defendant failed to
21 properly compensate Plaintiffs for all of their overtime hours.

22 49. Defendant was aware that Plaintiffs’ working hours routinely exceeded 40
23 hours.
24

25 50. Defendant required Plaintiffs to work overtime as a condition of their
26 employment.

27 51. Defendant wrongfully withheld wages from Plaintiffs by failing to pay all
28 wages due for overtime hours Plaintiffs worked.

1 52. Defendant refused and/or failed to properly disclose or apprise Plaintiffs of
2 their rights under the FLSA.

3 53. Defendant's failure and/or refusal to compensate Plaintiffs at the rates and
4 amounts required by the FLSA was willful.

5
6 **COLLECTIVE ACTION ALLEGATIONS**

7 54. Plaintiffs, on behalf of themselves and the Collective Members, realleges and
8 incorporates by reference all allegations in all preceding paragraphs.

9 55. Plaintiffs bring this action on behalf of themselves and all other similarly
10 situated individuals pursuant to 29 U.S.C. § 216(b).

11 56. The proposed collective class for the FLSA claim is defined as follows:

12 **All persons who work[ed] for Defendant Rocket Mortgage, LLC; who**
13 **work[ed] over 40 hours in any given workweek as a past or present**
14 **mortgage broker, who were not paid overtime at the correct overtime**
15 **rate of pay for all hours worked over 40 in a given workweek are known**
16 **as (the "Collective Members").**

17 57. Plaintiffs have given their written consent to be Named Party Plaintiffs in
18 this action pursuant to U.S.C. § 216(b). Plaintiffs' signed consent forms are attached as
19 **"Exhibit 1"**. As this case proceeds, it is likely that other individuals will file consent forms
20 and join as "opt-in" plaintiffs.

21 58. At all relevant times, Plaintiffs and the Collective Members are and have
22 been similarly situated, have had substantially similar job requirements and pay provisions,
23 and are and/or have been subject to Defendant's decision, policy, plan, and common
24 programs, practices, procedures, protocols, routines, and rules of willfully failing and
25 refusing to pay one-and-one-half times Plaintiffs' and the Collective Members' regular
26 rates of pay for all time in excess of forty (40) hours per workweek that Defendant suffered
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1 or permitted them to work.

2 59. Plaintiffs' claims stated herein are essentially the same as those of the
3 Collective Members. This action is properly maintained as a collective action because in
4 all pertinent aspects the employment relationship of individuals similarly situated to
5 Plaintiffs' are identical or substantially similar.
6

7 60. Defendant paid Plaintiffs and the Collective Members an hourly rate.

8 61. Plaintiffs and the Collective Members routinely worked over forty (40) hours
9 in a given workweek and were not compensated at the appropriate overtime rate by
10 Defendant for all hours they worked over forty in a given workweek.
11

12 62. The Collective Members perform or have performed the same or similar
13 work as Plaintiffs.
14

15 63. As such, the Collective Members are similar, if not identical, to Plaintiffs in
16 terms of job duties, pay structure, and/or the denial of overtime pay.

17 64. Defendant's failure to pay overtime compensation required by the FLSA
18 results from generally applicable policies or practices and does not depend on the personal
19 circumstances of the Collective Members.
20

21 65. The experiences of Plaintiffs, with respect to their pay, are typical of the
22 experiences of the Collective Members.

23 66. All collective members, irrespective of their particular job requirements and
24 job titles, are entitled to overtime compensation based upon their appropriately calculated
25 regular rate of pay for hours worked in excess of forty (40) during a given workweek.
26

27 67. Notice of this action should be sent to all similarly situated employees.

28 68. There are numerous similarly situated current and former employees of

1 Defendant who have been denied appropriate compensation in violation of the FLSA, who
2 would benefit from a Court supervised notice of the lawsuit and the opportunity to join the
3 case.
4

5 69. Those similarly stated employees are known to Defendant and are readily
6 identifiable through Defendant's records.

7
8 **COUNT I**
(FAILURE TO PAY OVERTIME WAGES – FLSA – 29 U.S.C. § 207)

9 70. Plaintiffs, on behalf of themselves and the Collective Members, reallege and
10 incorporates by reference all allegations in all preceding paragraphs.

11 71. Plaintiffs and the Collective Members are/were non-exempt employees
12 entitled to the statutorily mandated overtime wages.

13 72. While employed by Defendant, Plaintiffs and the Collective Members
14 worked numerous hours of overtime that Defendant did not pay at the correct overtime
15 rate.
16

17 73. As a result, Defendant has intentionally failed and/or refused to pay Plaintiffs
18 and the Collective Members all owed overtime according to the provisions of the FLSA.
19

20 74. Defendant further has engaged in a widespread pattern and practice of
21 violating the provisions of the FLSA by failing and/or refusing to pay Plaintiffs and the
22 Collective Members in accordance with 29 U.S.C. § 207.

23 75. Defendant knew that – or acted with reckless disregard as to whether – their
24 refusal or failure to properly compensate Plaintiffs and the Collective Members over the
25 course of their employment would violate federal law, and Defendant was aware of the
26 FLSA overtime requirements during Plaintiffs' and the Collective Members' employment.
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As such, Defendant's conduct constitutes a willful violation of the FLSA.

1 76. As a result of Defendant's failure or refusal to pay Plaintiffs and the
2 Collective Members a wage equal to one-and-one-half times Plaintiffs' and the Collective
3 Members' regular rates of pay for work they performed for Defendant in excess of their
4 regular 40-hour workweek, Defendant violated 29 U.S.C. § 207(a).

5
6 77. Plaintiffs and the Collective Members are therefore entitled to compensation
7 of one-and-one-half times their regular rates of pay, to be proven at trial, plus an additional
8 equal amount as liquidated damages, together with interest, reasonable attorney's fees, and
9 costs.

10
11 **WHEREFORE**, Plaintiffs, individually, and on behalf of all other similarly
12 situated persons, respectfully requests that this Court grant the following relief in Plaintiffs'
13 and the Collective Members' favor, and against Defendant:

14
15 A. Designation of this action as a collective action on behalf of the FLSA
16 Collective Members (asserting FLSA claims) and prompt issuance of notice pursuant to 29
17 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them
18 of the pendency of this action, and permitting them to timely assert FLSA claims in this
19 action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);

20
21 B. For the Court to declare and find that the Defendant committed one or more
22 of the following acts:

- 23 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing
24 to pay overtime wages;
25 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;

26 C. For the Court to award compensatory damages, including liquidated damages
27 pursuant to 29 U.S.C. § 216(b), to be determined at trial;
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1 D. For the Court to award prejudgment and post-judgment interest;

2 E. For the Court to award Plaintiffs' reasonable attorneys' fees and costs of the
3 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth herein;
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5 F. For the Court to provide reasonable incentive awards for the named Plaintiffs
6 to compensate them for the time they spent attempting to recover wages for the Collective
7 Members and for the risks they took in doing so; and
8

9 G. Such other relief as this Court shall deem just and proper;

10 RESPECTFULLY SUBMITTED January 4, 2023.

11 **WEILER LAW PLLC**

12 By: /s/ James Weiler
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14 Phoenix, AZ 85018
15 Attorneys for Plaintiffs
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